

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY X. KELLEY,

Defendant.

Case No. 3:15-cr-05198-RBL

DECLARATION OF ANGELO J.
CALFO IN SUPPORT OF
DEFENDANT'S MOTION TO DELAY
INTRODUCTION OF OLD REPUBLIC
TITLE WITNESSES

I, Angelo J. Calfo, declare as follows:

1. I am a partner with Calfo Harrigan Leyh & Eakes LLP ("CHLE"), the law firm representing Mr. Kelley in this prosecution.

2. Attached as Exhibit 1 is a true and correct copy of an email chain dated March 21, 2016 between defense counsel, counsel for Old Republic Title, and AUSA Kathryn Frierson.

3. Attached as Exhibit 2 is a true and correct copy of an email dated August 22, 2011 from Lynn Levendowski to Scott Smith regarding a PCD refund letter.

1 I declare under penalty of perjury under the laws of the United States of America that
2 the foregoing is true and correct.

3 DATED this 21st day of March, 2016 at Seattle, Washington.

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5 s/Angelo J. Calfo
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Andrew C. Friedman	andrew.friedman@usdoj.gov
Arlen R. Storm	arlen.storm@usdoj.gov
Katheryn Kim Frierson	katheryn.k.frierson@usdoj.gov
Richard E. Cohen	richard.e.cohen@usdoj.gov

EXHIBIT 1

From: Frierson, Katheryn K. (USAWAW) [<mailto:Katheryn.K.Frierson@usdoj.gov>]

Sent: Monday, March 21, 2016 8:11 PM

To: Angelo Calfo; Friedman, Andrew (USAWAW); Storm, Arlen (USAWAW); Emily Dodds Powell; Patty Eakes; Susie Clifford; Nancy Driver

Cc: Skok, Gavin

Subject: RE: US v. Kelley

Angelo, we oppose your motion to delay examination of ORT witnesses and to delay the progress of this trial. Especially with respect to Ms. LeVeck, you have all the information necessary through the accommodation of ORT's counsel.

Katheryn Kim Frierson

Assistant United States Attorney | U.S. Attorney's Office | Western District of Washington

700 Stewart Street, Suite 5220 | Seattle, Washington 98101-1271

(206) 553-4737 | katheryn.k.frierson@usdoj.gov

From: Angelo Calfo [<mailto:angeloc@calfoharrigan.com>]

Sent: Monday, March 21, 2016 7:46 PM

To: Skok, Gavin; Friedman, Andrew (USAWAW); Frierson, Katheryn K. (USAWAW); Storm, Arlen (USAWAW); Emily Dodds Powell; Patty Eakes; Susie Clifford; Nancy Driver

Subject: RE: US v. Kelley

Gavin,

I appreciate this effort, but it is not sufficient. I need to review all the available documents before I am in a position to complete the examination of Ms. LeVeck. We'll file our motion, although I'm still waiting to hear from the government attorneys.

Angelo

From: Skok, Gavin [<mailto:gskok@Riddellwilliams.com>]

Sent: Monday, March 21, 2016 7:09 PM

To: Angelo Calfo; Friedman Andrew; Frierson Katheryn K. (USAWAW); Storm Arlen; Emily Dodds Powell; Patty Eakes; Susie Clifford; Nancy Driver

Subject: RE: US v. Kelley

All –

I've reviewed the documents subject to the judge's order. None of them have Patty LeVeck as a sender or a recipient. There is one document that mentions her briefly in its text (document 30 on the privilege log, from Lynn Levendowski to Scott Smith, ORTLKC006125-006129). Document 31 is the response to that email from Scott Smith to Lynn Levendowski (ORTLKC006130-006131) and includes in the string a copy of Lynn's original email (document 30). I have not found any mention of Ms. LeVeck in any of the other emails. I read the judge's order at page 5, lines 16-17 as being addressed to the portion of the email from Lynn to Scott contained in document 30.

Due to time and resource constraints, we are not able to produce all of the documents this evening, and likely not until Wednesday. However, in light of your trial needs I have attached a copy of document 30, which is the only one in which Patty LeVeck is mentioned. We will produce a more formal copy removing the privileged stamp with our other documents but as a matter of courtesy I wanted to get this to you all now.

Many thanks,
Gavin

From: Angelo Calfo [<mailto:angeloc@calfoharrigan.com>]

Sent: Monday, March 21, 2016 3:20 PM

To: Skok, Gavin; Friedman Andrew; Frierson Katheryn K. (USAWAW); Storm Arlen; Emily Dodds Powell; Patty Eakes; Susie Clifford; Nancy Driver

Subject: RE: US v. Kelley

Gavin—

Understood, but that doesn't mean that the disclosure of those documents will not bear on her testimony. Ms. LeVeck had involvement and oversight of the handling of the settlement funds. Again, I request that you produce the documents to us tonight if possible or, in the alternative, I request that the government delay the testimony of Ms. LeVeck until after the documents are produced.

Thanks,

Angelo

From: Skok, Gavin [<mailto:gskok@Riddellwilliams.com>]

Sent: Monday, March 21, 2016 2:00 PM

To: Angelo Calfo; Friedman Andrew; Frierson Katheryn K. (USAWAW); Storm Arlen; Emily Dodds Powell; Patty Eakes; Susie Clifford; Nancy Driver

Subject: RE: US v. Kelley

Angelo –

Thank you for following up. Patty LeVeck was not the author or recipient of any of the documents that is listed on ORTL's privilege or redaction log.

Judge Leighton allowed us through Thursday to serve these documents. While we will try to accommodate your request to produce them earlier, we may need until Thursday to do so. I will update you later in the week as we progress with the redactions.

Many thanks,
Gavin

From: Angelo Calfo [<mailto:angeloc@calfoharrigan.com>]

Sent: Monday, March 21, 2016 1:21 PM

To: Friedman Andrew; Frierson Kathryn K. (USAWAW); Storm Arlen; Emily Dodds Powell; Patty Eakes; Susie Clifford; Nancy Driver
Cc: Skok, Gavin
Subject: Fwd: US v. Kelley

Counsel--

In light of the Court's order today, we request that you delay calling any further ORT witnesses until Mr. Skok has produced the documents ordered to be provided. In particular, Ms. LeVeck is a recipient of a number of the documents to be produced. Please let us know your position on this issue. I'm copying Mr. Skok on this email and encourage him let us know when the production can be completed.

Angelo J. Calfo
Calfo Harrigan Leyh & Eakes LLP
(206) 294-7440 (office)
(206) 229-3441 (cell)

Sent from my mobile phone

Begin forwarded message:

From: Emily Dodds Powell <emilyp@calfoharrigan.com>
Date: March 21, 2016 at 1:05:57 PM PDT
To: "gskok@Riddellwilliams.com" <gskok@Riddellwilliams.com>
Cc: Angelo Calfo <angeloc@calfoharrigan.com>
Subject: US v. Kelley

Hi Gavin,

In case you didn't yet see the court's order following its in camera review of the ORT documents, I've attached it. Please produce to us the documents referenced in the court's order as soon as possible. As you know, ORT witness Patty LeVeck is expected to testify tomorrow, and Janet Frets may also be testifying this week. We would like to avoid having to recall those witnesses.

Please let me know if you have any questions. Thank you for your help.

Best,
Emily

Emily Dodds Powell
CALFO HARRIGAN LEYH & EAKES LLP
999 Third Avenue, Suite 4400 | Seattle, WA 98104
T: 206 623 1700 | www.calfoharrigan.com

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EXHIBIT 2

From: Lynn Levendowski
Sent: Monday, August 22, 2011 11:19 AM
To: 'Smith, Scott A.'
Cc: Rick Dosa
Subject: PCD refund letter
Attachments: sample letter (rev 8.18.11 by Chris Schulz).doc; SKMBT_60011081707250.pdf

Hi Scott,

I met with Chris Schulz, Patty LeVeck and Janet Frets last Thursday with regards to the PCD refund project.

- A special extension has been set up for Janet to use in connection with this project. The voicemail will instruct the caller to leave their name, escrow number, property address and day time telephone number and that they will receive a return telephone call within 1 business day. As Janet doesn't work on Fridays, she will change the message on Thursday night to let the caller know they can expect a call on Monday. This will give Janet an opportunity to confirm the recons were recorded prior to calling them back. The phone number in the attached letterhead goes directly to this special extension.
- Chris suggested modifying the letter to specifically state what the refunds was for. He felt that referring to "closing costs" might get people overly excited, as "closing costs" include loan fees, commissions, etc. and could add up to thousands and thousands of dollars. Are you okay with specifically stating "trustees fees"?
- Janet has ordered 2,000 window envelopes with the Lynnwood return address. We will have them delivered as soon as they arrive.
- Janet's signature is in the attached PDF document

I will let you know as soon as I have the updated spreadsheet from ORTICON that includes the property address and all payee names in one field. Can you think of anything else?

Thanks,

Lynn M. Levendowski
Senior Vice President
Corporate Escrow Operations
524 Gibson Drive
Roseville, CA 95678
phone: 530.758.3639
cell: 530.613.6333
llevendowski@ortc.com

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OLD REPUBLIC TITLE & ESCROW, Ltd.

4114 198th Street SW, Suite 4 • Lynnwood, WA 98036 • (425) 835-7408 • FAX (425) 776-3990

August 22, 2011

Customer Name
Street address
City, State, Zip

Re: Escrow no. _____
Property Address: _____

Dear Customer:

You may be entitled to a refund of Trustees fees that were collected at the time of your closing. Because your transaction closed some time ago, we want to confirm that we have your current address before we mail you a refund check. Please sign below, indicating your current address, and return to the undersigned at the address in the above letterhead.

Sincerely,

Janet Frets
Quality Assurance Department

I verify that I was an Old Republic Title customer and that my current address is

☐ the same as above, or

☐ _____
street address, apt or suite, city, state, zip code

Signature

Printed name

Signature

Signature

Printed name

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Printed name

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From: Lynn Levendowski
Sent: Monday, August 22, 2011 11:19 AM
To: 'Smith, Scott A.'
Cc: Rick Dosa
Subject: PCD refund letter
Attachments: sample letter (rev 8.18.11 by Chris Schulz).doc; SKMBT_60011081707250.pdf

Tracking:	Recipient	Read
	'Smith, Scott A.'	
	Rick Dosa	Read: 8/22/2011 11:26 AM

Hi Scott,

I met with Chris Schulz, Patty LeVeck and Janet Frets last Thursday with regards to the PCD refund project.

- A special extension has been set up for Janet to use in connection with this project. The voicemail will instruct the caller to leave their name, escrow number, property address and day time telephone number and that they will receive a return telephone call within 1 business day. As Janet doesn't work on Fridays, she will change the message on Thursday night to let the caller know they can expect a call on Monday. This will give Janet an opportunity to confirm the recons were recorded prior to calling them back. The phone number in the attached letterhead goes directly to this special extension.
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Thanks,

Lynn M. Levendowski
Senior Vice President
Corporate Escrow Operations
524 Gibson Drive
Roseville, CA 95678
phone: 530.758.3639
cell: 530.613.6333
llevendowski@ortc.com

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